

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMOND OMAR TRAPP,

Defendant-Appellant.

UNPUBLISHED

January 20, 2005

No. 249499

Wayne Circuit Court

LC No. 02-015220-01

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of second-degree murder, MCL 750.317, assault with intent to do great bodily harm less than murder, MCL 750.84, three counts of felonious assault, MCL 750.82(1), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to concurrent terms of twenty-six to fifty years in prison for the murder conviction, two to ten years for the assault with intent to do great bodily harm conviction, and one to four years for each felonious assault conviction. A consecutive two-year sentence was imposed for the felony-firearm conviction. We affirm.

Defendant purchased a 1981 metallic mint green Chevrolet Caprice in September 2002, and it was stolen in October 2002. Terrence Brown, accompanied by his cousin Jerome Brown, purchased a 1981 metallic mint green Chevrolet Caprice in December 2002. Jerome registered the vehicle in his name because Terrence did not have identification. On November 8, 2002, Terrence, Jerome, and several other people were sitting on the porch at the house of Terrence's mother in Detroit. Terrence's Caprice was parked in the driveway. Defendant arrived at the home in a Cadillac, accompanied by two individuals in a Buick Regal. Defendant believed that the Caprice in the driveway was his stolen vehicle.

Defendant got out of the Cadillac and fired several gunshots. The testimony differs about whether these shots were fired at the group of people on the porch or into the air. Everyone on the porch scattered; some ran into the house, and some fled. Several witnesses testified that the man in the front passenger seat of the Regal, who was known only as "William," held a gun out the window and fired several gunshots. Jerome came out onto the porch and asked defendant if he could retrieve some items from the Caprice. Defendant replied, "not unless you want a hole in your head, too." Defendant admitted that he then fired one gunshot at the windshield of an Oldsmobile that was also parked in the driveway. He did so out of anger because he believed that Terrence had changed the tires on the Caprice.

The driver of the Regal, a woman known only as “Tracy,” got into the Caprice. Defendant got back into the Cadillac, and the Regal, the Cadillac, and the Caprice drove away. Terrence and the group remaining at the house discovered that Terrence’s cousin, Roderick Coleman, was lying in the driveway near where the Caprice had been parked. He had been killed by a gunshot to his head.

Defendant contends that the trial court erred in refusing to give the jury instruction he requested regarding claim of right. We review claims of instructional error de novo. *People v Perez*, 469 Mich 415, 418; 670 NW2d 655 (2003). When reviewing jury instructions, we examine them “in their entirety to determine whether the trial court committed error requiring reversal.” *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). Instructions must include “all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them.” *Id.* The trial court must provide requested jury instructions on any theories or defenses if they are supported by the evidence. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995).

Defendant argued that, although he fired gunshots into the air, William was the one who actually fired the shot that killed Roderick Coleman. Accordingly, the prosecution requested jury instructions regarding common unlawful enterprise and carjacking. The prosecution argued that, because the death of a victim was a foreseeable result of a carjacking, the jury could find defendant guilty of second-degree murder as an aider and abettor if they believed he participated in the carjacking .

In order to show that a defendant aided and abetted a crime, the prosecution must establish “that (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement.” *People v Carines*, 460 Mich 750, 757-758; 597 NW2d 130 (1999).

In the instant case, after properly instructing the jury regarding aiding and abetting, the trial court provided the standard instruction regarding a separate crime within the scope of a common unlawful enterprise. It stated that in determining whether defendant intended to help someone else commit the offense of first-degree premeditated or second-degree murder, the jury could consider whether defendant might have expected the murder to happen as part of the activity of carjacking. The trial court cautioned the jury that proof that defendant merely intended to help commit a carjacking was insufficient. The court also instructed the jury that the prosecution bore the burden of proving that defendant intended to help commit first-degree or second-degree murder. The trial court further stated that defendant was not charged with carjacking and that the jury could consider it only as it related to the prosecution’s theory of common criminal enterprise. It then instructed the jury on the elements of carjacking.

Defendant asserts that the trial court erred in refusing to instruct the jury regarding claim of right. He argues that, because he believed the Caprice belonged to him, the jury could have found that he did not engage in carjacking. If they had found that he did not engage in carjacking, they might not have convicted him of second-degree murder. A defendant may employ a “claim of right defense” when a dispute exists regarding his “felonious intent at the time of the taking.” *People v Cain*, 238 Mich App 95, 118-119; 605 NW2d 28 (1999). A claim

of right defense provides that, if a defendant had a good-faith belief that he had a legal right to take the property at issue, then he lacked the intent to deprive another of property. *Id.* at 119.

To establish the offense of carjacking, the prosecution must prove the following:

(1) that the defendant took a motor vehicle from another person, (2) that the defendant did so in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle, and (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting the other person in fear. [*People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998), applying MCL 750.529a.]

Carjacking, unlike armed robbery involving an automobile, does not require proof that the defendant intended to permanently deprive the victim of possession of a vehicle. *People v Parker*, 230 Mich App 337, 344; 584 NW2d 336 (1998). Rather, it constitutes a general intent crime and does not require proof of intent beyond the intent to do the act itself. *Davenport*, *supra* at 580-581.

Because the elements of carjacking do not include the specific intent to permanently deprive another of ownership of a vehicle, the claim of right defense is not available. Therefore, the trial court did not err in denying defendant's request for a jury instruction regarding this defense.

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood